IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7946 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMESHBHAI @ SANNI LAXMANBHAI RABARI

Versus

STATE OF GUJARAT

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Appearance:

MR ANIL S DAVE for Petitioner

MR UDAY BHATT, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu came to be detained by virtue of an order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad, dated the 26th June, 2000, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA

Act" for short).

2. The petitioner-detenu is labelled as a 'Dangerous Person' as defined under the PASA Act and a satisfaction is recorded by the detaining authority in the grounds of detention that his activites are deterimental to public order. For arriving at this subjective satisfaction, the detaining authority took into coinsideration one offence registered against the detenu under the Arms Act. The authority also took into consideration statements of two anonymous witnesses recorded on the 21st and the 23rd June, 2000. The detaining authority exercising powers under Section 9(2) of the PASA Act, did not disclose the identity of these witnesses, after recording a satisfaction that the witnesses suffer from a genuine apprehension from the petitioner-detenu in respect of their person and property. After considering possibility of resorting to less drastic remedies, the detaining authority came to a conclusion that the petitioner is requied to be detained under the provisions of the PASA Act in order to immediately prevent him from pursuing his illegal and anti-social activities.

3. The petitioner challenges the order of detention on various grounds. Mr. Dave, learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on the 25th June, 2000 and the order was passed on the 26th June, 2000. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses quo the detenu.

3.1 Mr. Dave submitted further that a representation was made on 15th July, 2000 on behalf of the detenu to the detaining authority. It has been replied to by the detaining authority on the 26th July, 2000, wherein the documents demanded on behalf of the detenu are specifically refused and then the representation is sent to the Government on the ground that the order of detention is already approved by the Government. Mr. Dave submitted that this consideration of the representation by the detaining authority and rejection of the request for copies of the documents by the detaining authority after the authority having become functus officio is not permissible at law. It amounts to infringement of right of making an effective representation envisaged under Article 22(5) of the

Constitution. In support of his argument, he has placed reliance on the decisions of this Court in the case of Urmilaben Navnitlal Gandhi v. Commissioner of Police, 1994(2) GLH (U.J.) 10 and Salim Pothiyu Rehmanbhai Belia v. District Magistrate and Ors, 1994(2) GLH (U.J) 11.

4. Learned Assistant Government Pleader, Mr. Bhatt, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on the 21st and 23rd June, 2000. The same have been verified by the detaining authority on the 25th June, 2000 and the order is passed on the 26th June, 2000. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

6. So far as the second ground of challenge is concerned, in light of this factual background, if the legal position is considered, the detaining authority becomes functuous officio after the order of detention is approved by the Government and the representation, thereafter, cannot be decided by him. All that he is required to do is to forward the same to the Government for its consideration. In the instant case, the

detaining authority has rejected the representation after having become functuous officio and then forwarded the same to the Government. This can be said to have infringed the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. The continued detention of the detenu, therefore, would stand vitiated. The petition deserves to be allowed on this ground also and the same is, therefore, allowed.

7. In the result, the petition is allowed. The impugned order of detention dated the 26th June, 2000, passed against the detenu is hereby quashed and set aside. The detenu-Rameshbhai alias Sanni Laxmanbhai Rabari is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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